IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6063 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DWARKADAS P SOLANKI

Versus

TANUMAL JAIMAL KESHWANI

Appearance:

MR MAHENDRA K PATEL for Petitioner

MR PR NANAVATI for Respondent No. 1

PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/08/2000

ORAL JUDGEMENT

#. Rule. Learned advocate Ms.Chaitali Bhatt waives service on behalf of the respondent No.1. Learned APP

Mr.S.S.Patel waives service on behalf of the respondent No.2 - State.

#. The petitioner has prayed for quashing and setting aside of the proceedings of Criminal Case No.2052/96 filed in the court of Metropolitan Magistrate, Court No.17, Ahmedabad on the ground that the respondent No.1 who has filed the said proceedings has also filed another Criminal Case bearing No.1499/96 on 10.5.1996 in the same court on the same facts for the offence made punishable under section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "Act" for short).

#. On verification of the accompaniments attached to the petition it appears that, Criminal Case No.2052/96 was filed by the respondent No.1 against the present petitioner on 9.4.1996 on the allegation that present petitioner was running a business as the cloth merchant in the name and style of Rajendrakumar & Company. That the petitioner had visited the shop of the respondent No.1-Tanumal J.Keshwani and had represented that, he desired to deal in the business of purchase and sale of clothes with the respondent No.1. On the said representation, present petitioner procured the goods of clothes on credit and promised that price of the said goods shall be paid in three different cheques dated 26.3.1996, 27.3.1996 and 28.3.1996. The petitioner further assured the respondent No.1 that all these cheques would be honoured on presentation. Relying on representation the respondent No.1 delivered clothes worth Rs.17,06,090/- to the present petitioner. However, subsequently when the cheques given by the petitioner were tendered for discounting to Sarvodaya Cooperative Bank Ltd. Gita Mandir Road, all the three cheques returned dishonoured with the remarks that "fund insufficient" through the banker of respondent No.1 Sindh Mercantile Bank, Kubernagar Branch. That on demand from the petitioner, the respondent No.1 was given evasive reply and as such the petitioner has committed the offence made punishable under sections 420 and 406 of IPC etc. It is further alleged in the complaint that on 9.4.1996 the petitioner visited the house of respondent No.1 around 8.00 a.m. in the morning and threatened dire consequences if the respondent No.1 has resorted to any talk in the market about dishonoured cheques or cheating committed by the petitioner. The complaint was presented in the court on 7.4.1996 and after recording verification, learned Metropolitan Magistrate referred the case to the Police Inspector, Sardarnagar Police Station under section 156(3) of the Criminal Procedure Code, 1973 (hereinafter referred to as "Code" for short).

That the said case was registered as M.Case No.53/96 and was pending investigation.

#. That in the meanwhile, the respondent No.1 filed another complaint against the present petitioner in the very court of the Metropolitan Magistrate, Court No.17, Ahmedabad under section 138 of the Act. The complaint is registered vide Criminal Case No.1499/96 on 10.5.1996. It is averred and alleged by the respondent No.1 in the said complaint that, in order to make payment of goods purchased, the petitioner had given various cheques as enumerated in para 1 of the complaint to the respondent No.1 and the said cheques have returned dishonoured on presentation through his banker. Thereby, demand notice dated 9.4.1996 under the Act was served and as no amount is paid, present complaint is filed. That the Metropolitan Magistrate having recorded the verification took the cognizance of the case and ordered to issue summons against the present petitioner.

#. On the basis of the above referred to two parallel proceedings resorted to by the respondent No.1 on the same facts, the petitioner has filed the present petition to quash the criminal proceedings initiated vide Criminal Case No.2052/96 which is registered as M.Case No.53/96.

#. On behalf of the respondent No.1 Ms.Bhatt has referred to and relied on the observations made by the High Court of Kerala in the matter of K.S.Anto Vs. Union of India, reported vide Company Cases Vol.76, 1993 page 105 to submit that offence prescribed under section 138 of the Act and section 420 of IPC are two different and distinct offences constituted by different ingredients. Under the circumstances, the petition cannot succeed and deserves to be rejected.

#. On scrutiny and consideration of material produced on record, it is difficult to accept the submissions urged on behalf of the respondent No.1 on the ground that the authority cited at bar has no application to the facts involved in the present matter. In the said case of K.S.Anto (supra) the High Court of Kerala was concerned with the validity of sections 138 to 142 of the Act in the context of violation of Article 20 of the Constitution as the offence under section 420 of IPC was there and no person could be vexed by two different provisions of law. That the said authority having no application, it would be necessary to consider whether the respondent No.1 could resort to two parallel proceedings on the same facts for two different offences in the same court.

#. In the matter of G.Sagar Suri & Anr. Vs. State of UP & Ors. reported vide JT 2000(1) SC 360, the Apex Court had made the following material and relevant observations.:

"Section 482 with Penal Code, 1860 - Sections 406, 420 and Negotiable Instruments Act, 1881 Section 138 - Quashing of criminal proceeding Loan advanced - Two cheques representing the loan amount and interest given - Dishonoured - Fresh cheques issued - Same also dishonoured Complaint u/s 138 NI Act filed - At about the same time FIR lodged for offences u/s 406, 420 IPC - No allegation of duping the complainant - Appellants not even directors of respondent company, though one described as authorised signatory - Cheques returned with remarks of `insufficient funds' Change of statement by informant regarding person approaching for loan. Held that it was commercial transaction and complaint u/s 138 was already filed. Thereafter lodging of FIR u/s 406, 420 IPC was an abuse of process of law. Proceedings quashed.

HELD

In the circumstances of the case in hand invoking the jurisdiction of criminal court for allegedly having committed offences under sections 406/420 IPC by the appellants is certainly an abuse of the process of law. A complaint under section 138 of the Negotiable Instruments Act has already been filed by the complainant. There is no allegation of any corrupt practice by any of the accused as if they duped the Finance Company in parting with the amount of Rs.50,00,000/-. As normally understood business of a finance company is to invite deposits, pay interest on that and also to give loans and earn interest. In that case it is essentially a commercial transaction. There is no occasion for the complainant to prosecute the appellants under sections 406/420 IPC and in his doing so it is clearly an abuse of the process of law and prosecution against the appellants for those offences is liable to be quashed."

#. On the basis of the above dicta, it would appear that

the respondent No.1 could not resort two different proceedings on the same facts for two different offences and in the same court.

##. In view of the aforesaid discussions, the petition is allowed. Criminal Case No.2052/96 filed in the court of Metropolitan Magistrate, Court No.17, Ahmedabad by the present respondent No.1 against the petitioner which is registered as M.Case No.53/96 by the Incharge of Police Station, Sardarnagar Police Station is hereby quashed and set aside. Rule to that extent is made absolute.

(A.K.Trivedi,J)
(pathan)